72-658 FILE COPY

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-658

CITY OF KENOSHA,
A Wisconsin Municipal Corporation;
CITY OF RACINE,
A Wisconsin Municipal Corporation;
ROBERT W. WARREN, Attorney General
of the State of Wisconsin,
Intervening Defendant,
Appellants,

v.

PETER G. BRUNO;	No. 71-C-330
BRUCE BLEASHKA;	No. 71-C-331
SLEEPY'S, INC.;	No. 71-C-332
FRED KAUZRICH;	No. 71-C-333
JEANETTE STENZEL;	No. 71-C-334
CHARLES WIGINTON;	No. 71-C-352
RICHARD A. MISURELLI and	No. 71-C-316
TERRANCE MC CUE;	
GO-GO OF RACINE, INC.,	No. 71-C-317
A Wisconsin Corporation,	
THEODORE F. WITHERIL, and	
JEROME J. RUETZ, JR.; and	
DAVID H. ROBERS,	No. 71-C-335

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

JURISDICTIONAL STATEMENT

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October 27, 1972

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions and temporary restraining orders of the Honorable John W. Reynolds, Judge of the United States District Court for the Eastern District of Wisconsin, entered on October 21, 1971, are at this time unreported and are included in the appendix herein, in cases numbered 71-C-330, 71-C-331, 71-C-332, and 71-C-333 at App. 102-110; in case 71-C-352 at App. 110-111; in case 71-C-334 at App. 111-112; in case 71-C-316 at App. 112-113; in cases 71-C-317 and 71-C-355 at App. 114-117.

The decisions and orders of the three-judge court made up of the Honorable Thomas E. Fairchild, Circuit Judge, and the Honorable John W. Reynolds and the Honorable Myron L. Gordon, Judges of the United States District Court for the Eastern District of Wisconsin, entered on August 2, 1972, are at this time unreported and are included in the appendix herein, in cases 71-C-316, 71-C-317, and 71-C-335 at App. 117-128; and in cases 71-C-330, 71-C-331, 71-C-332, 71-C-333, 71-C-334, and 71-C-352 at App. 129-130.

JURISDICTION

This is a single jurisdictional statement involving nine cases covering the captioned appellees which involve identical or closely related questions, as authorized by Supreme Court Rule 15 (3).

These are actions for declaratory and injunctive relief under the Civil Rights Act, 42 U.S.C. §1983. Jurisdiction is said to be involved under Title 28 U.S.C. §1343 (3). The three-judge court indicates in its decision that if civil rights jurisdiction were not proper each plaintiff could assert the necessary $10,000 controversy requirement of 28 U.S.C. §1331. It is alleged that secs. 176.05 (1) and 176.05 (8) of the Wisconsin Statutes violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The statutory provision conferring jurisdiction on this court to review the judgment by direct appeal is 28 U.S.C. §1253.

Cases sustaining the jurisdiction of the court to hear the appeal are *Goldstein v. Cox* (1970), 396 U.S. 471, 90 S.Ct. 671, 24 L.Ed. 2d 663, and *Wyman v. Rothstein* (1970), 398 U.S. 275, 90 S.Ct. 1582, 26 L.Ed. 2d 218.

WISCONSIN STATUTES INVOLVED

Section 66.054 (5):

"(b) The governing body of every city, village and town shall have the power, but shall not be required, to issue licenses to wholesalers and retailers for the sale of fermented malt beverages within its respective limits, as herein provided. Said retailers' licenses shall be of 2 classes, to be designated as Classes 'A' and 'B.' "

Section 176.05 (1), (5), (8):

"176.05 Liquor licenses. (1) AUTHORITY TO GRANT LICENSES. Each town board, village board and common council may grant retail licenses, under the conditions and restrictions in this chapter contained, to such persons entitled to a license under this chapter as they deem proper to keep places within their respective towns, villages, or cities for the sale of intoxicating liquors. No member of any such town board, village board or common council shall sell directly or indirectly or offer for sale, to any person, firm, or corporation that holds or applies for any such license any bond, material, product, or other matter or thing that may be used by any such licensee or prosepctive licensee in the carrying on of his or its said business.

"* * *

"(5) * * * Except as provided in sub. (6), all such licenses shall remain in force until July 1 next after the granting thereof, unless sooner revoked; * * *.

"* * *

"(8) ANNUAL LICENSE MEETINGS. All town and village boards and common councils, or the duly authorized committees of such councils, shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as it may be necessary, for the purpose of acting upon such applications for license as may be presented to them on or before April 15, and all applications

for license so filed shall be granted, issued or denied not later than June 15 for the ensuing license year, provided that nothing shall prevent any governing body from granting any licenses which are applied for at any other time. As soon as an application has been approved, a duplicate copy thereof shall be forwarded to the secretary of revenue. No application for a license which is in existence at the time of such annual license meeting shall be rejected without a statement on the clerk's minutes as to the reasons for such rejection."

QUESTIONS PRESENTED

1. Whether liquor and fermented malt beverage licenses which expire at the end of a licensing year constitute "liberty" or "property" within the meaning of the due process clause of the Fourteenth Amendment.

Answered by the three-judge court in the affirmative.

2. If a protected interest can be identified, is a legislative-type hearing coupled with availability of subsequent court review by certiorari a *meaningful* hearing under the due process clause?

Answered by the three-judge court in the negative.

3. Whether the abstention doctrine should apply to a three-judge court action where the prayer for relief includes the court-ordered issuing of a liquor license and the state remedies have not been exhausted?

Answered by the three-judge court in the negative.

STATEMENT OF THE CASE

Appellees were applicants for renewal of their Class "B" fermented malt beverage and intoxicating liquor licenses which were expiring on July 1, 1971, except Richard A. Misurelli who was applying for the license for the first time, apparently in place of a silent partner, Terrance McCue.

Wisconsin has local option for both fermented malt beverage licensing and liquor licensing under secs. 66.054 (5) (b) and 176.05 (1), Wis. Stats., respectively. If an application is denied the applicant must seek review in court by writ of certiorari. Section 176.05 (8) provides that where an application for renewal is rejected the clerk's minutes must show the reasons for such rejection. However, no judicial-type hearing is required. Municipalities hold legislative-type hearings before issuing or denying licenses. All licenses remain in force until July 1 next after the granting thereof unless sooner revoked as provided in sec. 176.05 (5), Wis. Stats.

During the licensing year from July 1, 1970, to July 1, 1971, appellees provided entertainment in their taverns consisting of nude and seminude dancing and violated municipal ordinances requiring costumes for dancers in cabarets, but the cities were enjoined from enforcement by federal court orders.

On June 1, 1971, after holding public hearings, the City Council of Racine, acting on the recommendation of its License and Welfare Committee, refused to renew the licenses of Go-Go of Racine, Inc., and David H. Robers because, among other things, the committee concluded that because of the manner of operation of their business, using nude entertainment, that the reputation of the City of Racine was

changing to that of a city of "ill repute." It was also concluded that an undesirable element was being attracted to the community which fostered an increase in prostitution, promiscuity, and venereal disease. (App. 115).

On the same date the City of Racine refused to issue an initial license to Richard A. Misurelli, apparently a silent partner of Terrance McCue who had held the 1970-1971 license but did not apply for renewal, for the same reasons that Go-Go of Racine, Inc., and David H. Robers were denied renewals.

On June 7, 1971, after holding public hearings, the City of Kenosha denied the renewals of Peter G. Bruno, Bruce Bleashka, Sleepy's, Inc., Fred Kauzrich, and Charles Wiginton because, among other things, the appellees had defiled the reputation of the City of Kenosha, areawise, statewise, and nationally, by using nude dancers, and because they had helped furnish an atmosphere conducive to the flourishing of prostitution, creating a bad environment, and setting improper moral standards for the children in the community. (App. 104).

Appellee Jeanette Stenzel was granted renewal of her license on June 7, 1971. However, on June 21, 1971, the City Council of Kenosha voted to reconsider Stenzel's license, and upon reconsideration voted to deny her a license.

On June 30, 1971, the Honorable John W. Reynolds issued a temporary restraining order which ordered the City of Kenosha to issue retail fermented malt beverage and intoxicating liquor licenses to Bruno, Bleashka, Sleepy's, Inc., and Fred Kauzrich. Subsequently, Judge Reynolds ordered licenses be issued to the other appellees, including Richard A. Misurelli, who had not held a liquor license for the year 1970-1971. (App. 112-113).

After the filing of amended complaints on September 21, 1971, which specifically attacked the constitutionality of secs. 176.05 (1) and (8), Wis. Stats., under the due process clause of the Fourteenth Amendment because the statutes permit denial of license without judicial-type hearing, Judge Reynolds issued memorandum opinions and orders in each of the cases directing that the temporary restraining orders then outstanding in each of the cases would be continued until further order of the court. (App. 102-110).

After the convening of a three-judge court, the Governor and the Attorney General of Wisconsin were notified of the pendency of the actions and the Attorney General intervened as a defendant. The parties stipulated to the facts and each moved for summary judgment. In ruling on the motion, the three-judge court found that Racine, acting upon the appellees' applications for renewal of their liquor licenses, except Misurelli who was a first-time applicant, held a public hearing before the City Council Licensing Committee in which all citizens of the community were allowed to make statements for and against the nude dancing activities in the taverns operated or proposed to be operated by the appellees. Citizens expressing their views were not placed under oath and they were not cross-examined. No verbatim transcript was made and none was requested by the appellees. The appellees appeared at the hearing and made statements. Notes were taken by the Committee and a written report was filed with the City Council recommending that licenses not be issued to Go-Go of Racine, Inc., Richard A. Misurelli, and David H. Robers. (App. 114-116). Substantially the same procedure was followed by the City of Kenosha in denying licenses to the other appellees. (App. 104-105).

The temporary restraining orders were entered by Judge Reynolds on October 21, 1971, on the basis that plaintiffs enjoy a reasonably good chance to prevail on the constitutional questions and that irreparable injury would result otherwise. The orders protected the licenses of the appellees through the 1971-1972 licensing year and that part of the 1972-1973 licensing year from July 1, 1972, to the August 2 decision and order of the three-judge court directing the appellant cities to grant Class "B" fermented malt beverage and intoxicating liquor licenses.

THE QUESTIONS ARE SUBSTANTIAL

I. The Decision Below Is Inconsistent With Rulings Of This Court.

A. The court below erred in determining a liquor license is a property right.

"There is no right to engage in the business of manufacturing, selling or otherwise dealing in intoxicating liquor in the sense that there is a right to engage in occupations and pursuits intrinsically desirable or innocuous. It is widely if not universally recognized that intoxicating liquor businesses of all kinds are potentially if not actually dangerous or harmful to the public health, morality and welfare, and that consequently they are subject to strict supervision or prohibition by states and also by municipalities authorized to act in the matter. * * *" 9 McQuillin, *Municipal Corporations*, 483, §26.186.

This court has recognized since *Crowley v. Christensen* (1890), 137 U.S. 86, 11 S.Ct. 13, 34 L.Ed. 620, that refusal to issue or renew a liquor license does not deny a property right. The court noted, 137 U.S. 91:

"* * * The police power of the State is fully competent to regulate the business — to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. * * * It is a matter of legislative will only. * * *"

See also *Ma-King Products Co. v. Blair* (1926), 271 U.S. 479, 46 S.Ct. 544, 70 L.Ed. 1046.

In *Lewis v. City of Grand Rapids* (6th Cir. 1966), 356 F. 2d 276, the court said: "The only inescapable rule of *Crowley* is that the denial of a hearing, in itself, would not violate the Fourteenth Amendment."

Since the Twenty-first Amendment this court has consistently held that the states possess "* * * broad regulatory power over the liquor traffic within their territories." *United States v. Frankfort Distilleries* (1944), 324 U.S. 293, 299, 65 S.Ct. 661, 664, 89 L.Ed. 951. *Joseph E. Seagram & Sons v. Hostetter* (1966), 384 U.S. 35, 42, 86 S.Ct. 1254, 16 L.Ed. 2d 336.

In *Goesaert v. Cleary* (1948), 335 U.S. 464, 69 S.Ct. 198, 93 L.Ed. 163, Justice Frankfurter placed in proper perspective the relative interest of the state in establishing a legislative scheme for governing and controlling liquor traffic and the rights expressed under the Fourteenth Amendment:

"* * * The Fourteenth Amendment did not tear history up by the roots, and the regulation of the liquor traffic is one of the oldest and untrammeled of legislative powers [of the state]. * * * The [Federal] Constitution does not require legislatures to reflect sociological insight, or shifting social standards, any more than it requires them to keep abreast of the latest scientific standards."

See also *Giozza v. Tiernan* (1893), 148 U.S. 657, 13 S.Ct. 721, 37 L.Ed. 599.

Here the "property" right question is similar to the question presented in *Board of Regents of State Colleges v. Roth* (1972), 405 U.S. —, 92 S.Ct. 2701, 32 L.Ed. 2d —. There the assistant professor was hired for a fixed term of one year and such employment accorded him no "property" interest protected by procedural due process. The court below cited the Court of Appeals decision in *Roth* (7th Cir. 1971), 446 F. 2d 806, which, of course, was reversed by this court.

There is no indication that the lower court considered whether there was any deprivation of liberty in the denial of the licenses involved in this appeal.

B. Legislative-type hearing with court review by certiorari is "meaningful" under the due process clause.

This court has repeatedly recognized that whether or not due process has been provided depends to a great extent upon the nature of the proceeding. Thus, in *Hannah v. Larche* (1960), 363 U.S. 420, 80 S.Ct. 1502, 4 L.Ed. 2d 1307, at 80 S.Ct. 1515, the court said:

> "* * * Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account. * * *"

A legislative-type hearing where an applicant may present whatever evidence he feels necessary to convince a licensing body to renew his license gives the applicant and the public a chance to be heard on the issues and the court can protect the applicant from arbitrary and capricious refusals by review by writ of certiorari. *State ex rel. Ruffalo v. Common Council* (1968), 38 Wis. 2d 518, 157 N.W. 2d 568.

The statutes being attacked in this action as in violation of the due process clause of the United States Constitution do not require a judicial-type hearing, but they do not prohibit such type of hearing if a court thought it advisable to remand a case upon review by certiorari where factual issues were not determined when the licensing body reached its decision. The court could also, of course, determine whether errors of law were committed by the licensing board, including due process questions under state and federal constitutions. *State ex rel. Wasilewski v. Bd. School Directors* (1961), 14 Wis. 2d 243, 111 N.W. 2d 198.

In the instant cases, however, the record is clear that there are no factual issues involved. Both cities made it plain that they did not grant the applicants their licenses because of nude dancing in their establishments.

Therefore, not only are the Wisconsin statutes complained of not invalid on their face, but the lower court also erred in concluding that the appellees' due process rights were abridged by not being afforded a judicial-type hearing since there were no facts at issue in these cases.

Thus, the legislative-type hearing with court review by certiorari is not only *meaningful* within *Armstrong v.*

Manzo (1965), 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed. 2d 62, but also "appropriate to the nature of the case" within the meaning of *Mullane v. Central Hanover Bank & Trust Co.* (1949), 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865.

Chapter 42 of the Laws of 1941 amended sec. 176.05 (8) of the Wisconsin Statutes to require reasons for rejection of renewal of liquor licenses in the clerk's minutes as an aid to the reviewing court on certiorari in determining if the licensing body was arbitrary, capricious, or discriminatory. *State ex rel. Boroo v. Town Board* (1960), 10 Wis. 2d 153, 102 N.W. 2d 238.

II. There Is A Conflict Of Opinion Among The Circuits On The Question.

The principal case relied on by the three-judge court is *Hornsby v. Allen* (5th Cir. 1964), 326 F. 2d 605. The Wisconsin Supreme Court specifically rejected *Hornsby* in the *Ruffalo* decision. Hornsby brought suit under the Civil Rights Act after being denied a liquor dealer's license. The court said that the licensing power is an adjudicative process and therefore judicial in nature rather than legislative and, therefore, the due process and equal protection provisions of the Fourteenth Amendment apply in the liquor licensing field. The court did not address itself to the question of whether a liquor license is liberty or property within the meaning of the due process clause. Therefore, insofar as the court below relied entirely upon due process requirements, the *Hornsby* case is not persuasive.

Two years after *Hornsby* the due process issue was squarely considered by the Sixth Circuit in *Lewis v. City of Grand Rapids* (6th Cir. 1966), 356 F. 2d 276. Getting directly

to the heart of the matter, at page 286, the court quoted the district judge as follows:

> "We recognize that the Michigan Supreme Court and the courts of the other states have held consistently that the due process clause of the United States Constitution does not apply to matters concerning liquor licenses." 222 F. Supp. 384.

On the question of whether a license is property, the court referred to *Scott v. Arcada Township Board* (1934), 268 Mich. 170, 255 N.W. 752, which emphasized the difference between the granting of a license and its revocation, indicating that revocation might indeed require due process. The court pointed out, however, at page 285:

> "* * * Plaintiff Lewis did not own a license to operate a liquor establishment, and the opportunity to seek approval to become an owner was not, in our view, a property right.* * *"

The three-judge court herein, and also the district judge in the *Lewis* case, apparently relied on the decision in *Glicker v. Michigan Liquor Control Commission* (6th Cir. 1947), 160 F. 2d 96, as holding that the licensing board was required to hold a full-dress adversary hearing before denying approval of a liquor license. However, the *Lewis* court specifically denied such holding in *Glicker* and declined to so hold, page 288. The *Glicker* case held merely that the state under a guise of regulating the liquor business could not deny its citizens equal protection of the law.

The *Lewis* court said further, at page 289:

> "* * * We recognize some observations in the Hornsby case as being at odds with our conclusion and to that extent we decline to follow it."

In *Atlanta Bowling Center, Inc. v. Allen* (5th Cir. 1968), 389 F. 2d 713, the court sidestepped *Hornsby* and rejected contentions of violation of due process and equal protection where the aldermen and mayor had refused to approve a liquor license for a room at a bowling center, the reasons relating to the location, the nature of the family recreation center, the attraction of minors to an amusement park nearby, and past precedent that liquor licenses were not given to bowling alleys.

Commenting that *Hornsby* is "* * * a case mistakenly thought by too many to be a pledge that if local authorities would not, a Federal Court would, grant a liquor license * * *," p. 714, the court held that the ordinance governing issuance of liquor licenses and emphasizing public interest and welfare and relation of location to other activities, properties and uses gave sufficient notice to applicants that they would be judged on those factors when applying for a liquor license, even though such reasons given when denying application were not expressly articulated in the ordinance.

In the instant case, Chapter 21 of the Racine ordinances relating to health, safety and welfare of the public and Chapter X of the Kenosha ordinances provide adequate notice that such factors would be considered in acting on applications for liquor licenses in those cities.

The lower court's almost complete reliance on *Hornsby*, the *Lewis* court's refusal to honor *Hornsby* on the due process issue, and the *Atlanta Bowling Center* court's treatment of *Hornsby* seem to clearly establish issues worthy of plenary consideration by this court.

III. The Court Below Should Have Abstained.

The Three-judge Court Act was not designed to be a grant of power to federal judges to arbitrarily interfere with a state regulatory scheme. Rather, the history of the Act clearly establishes that it was passed as a compromise to limit the power of lower federal court judges to interfere with the operation of state statutes. It has been said that it's purpose was to prevent the "improvident statewide doom" by a federal court of a state legislative policy.

As Justice Frankfurter said in *Phillips v. United States* (1941), 312 U.S. 246, 61 S.Ct. 480, 85 L.Ed. 800, at 61 S.Ct. 483:

> "* * * The history of §266 * * * the narrowness of its original scope, the piece-meal explicit amendments which were made to it * * *, the close construction given the section in obedience to Congressional policy * * *, combine to reveal §266 not as a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term and to be applied as such."

As Judge Reynolds has indicated in his opinion of October 21, 1971 (App. 106), the temporary restraining order directing the issuance of liquor licenses on June 30, 1971, was issued despite the fact that the plaintiffs had not requested in their pleadings the convening of a three-judge district court or the entering of an interlocutory injunction. Judge Reynolds requested the three-judge court on his own motion several weeks after he had issued the temporary restraining order directing the municipalities to issue liquor licenses.

It is submitted that this court should determine whether the action of the single federal district judge violated 28 U.S.C. §2281 and 28 U.S.C. §2284, and whether the abstention principles stated in *Burford v. Sun Oil Co.* (1943), 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424, and *Alabama Public Service Commission v. Southern Railway Company* (1950), 341 U.S. 341, 71 S.Ct. 762, 95 L.Ed. 1002, which indicate that the court should abstain when its action would interfere with policies having statewide significance and importance, should not have been applied by the district judge.

The abstention principle is especially applicable to the appellee Go-Go of Racine, Inc., because a civil action was pending in the circuit court of Racine County at the time of Judge Reynolds' original exercise of jurisdiction. Mr. Justice White in his dissenting opinion in *Lynch v. Household Finance Corp.* (1972), 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed. 2d 424, indicated that *Younger* and companion cases support the view that the federal court's equitable powers should not be used to frustrate or interfere with the operation of state courts by adjudicating federal questions which can be adjudicated in state courts and this principle is applicable where state civil litigation is in progress.

IV. The Effect Of The Decision Below Is Undesirable.

The three retail liquor establishments in the City of Racine, Wisconsin, which are the subjects of this appeal, are presently operating under a license created by the judgment of the United States District Court for the Eastern District of Wisconsin. They are free to have nude dancing in these establishments licensed by the federal court. The license

which hangs on the wall takes the form of a blank application form of the City of Racine with the federal court order attached thereto. In Kenosha, six retail liquor establishments operate under the protective court order against the will of the licensing body of that city.

The improvident nature of the judgment is further illustrated by the terms which enjoin both citites "* * * from denying any application for the renewal of a liquor license as long as §§ 176.05 (1) and 176.05 (8) of the Wisconsin Statutes fail to require a hearing meeting the standards of due process set forth in this opinion." (App. 124, 130).

Apparently the citites cannot deny any application for the renewal of any other liquor license as long as the Wisconsin Statutes remain unchanged.

The court below has ruled directly contrary to the Supreme Court of Wisconsin, which held in *State ex rel. Ruffalo v. Common Council, supra,* that the granting of a liquor license is a legislative function which does not require a trial-type hearing to comport with due process.

If the lower court decision stands, not only Wisconsin but all other states which have local option laws will be required to change the method of granting or denying liquor licenses where the legislative-type hearing is now employed. In Wisconsin and many other states, town boards, village boards, and city councils perform the liquor licensing function. In the scheme of things, the people of these states have decided that local licensing gives better protection against the evils of the liquor traffic. There are two obvious reasons, however, why local legislative bodies would be inappropriate to conduct judicial-type hearings for liquor license applicants. First,

obviously many small towns and villages would be ill-equipped to handle such a proceeding without hiring hearing examiners and attorneys to handle the proceeding. Second, in cities where a city attorney could guide the proceeding, the legislative body would be engaging in a "mixing of functions" which has been criticized by many courts as possibly denying due process rights where one person or body is the complainant, prosecutor, judge, and jury. See *Amos Treat & Co. v. Securities and Exchange Commission* (D.C. Cir. 1962), 306 F. 2d 260. The answer, of course, would be to change the licensing procedures by removing them from the local legislative body or providing for appeal to another tribunal.

Before the states are forced to change their liquor licensing procedures this court should hear full argument on the questions presented by this appeal.

The court in *Lewis v. City of Grand Rapids, supra,* recognized the importance of local control of liquor, 356 F. 2d at 286:

> "* * * The traditional municipal interests in regulating the liquor business, together with the problems of conducting this regulation through competent, civic-minded, part-time officials, require the use of flexible procedures. These exigencies of city management must not be disregarded by ordering that plaintiff Lewis, and everyone else wishing to become a transferee of a liquor license, receive a process including '* * * *actor, reus, judex,* regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings.' * * *"

Accordingly, it is therefore respectfully submitted that probable jurisdiction should be noted.

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